

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-27 are pending in this application. By this Amendment, claims 1-26 are amended, and claim 27 is added. No new matter is added. Claims 1, 25, and 26 are the independent claims.

Applicant appreciates the Examiner's indication that the Information Disclosure Statements filed on June 7, 2006 and July 18, 2006, have been considered.

Applicant respectfully notes that the present action does not indicate that the claim to foreign priority under 35 U.S.C. §119 has been acknowledged or that certified copies of all priority documents have been received by the U.S.P.T.O. Applicant respectfully requests that the Examiner's next communication include an indication as to the claim to foreign priority under 35 U.S.C. §119 and an acknowledgement of receipt of the certified copies of all priority documents.

Applicant also respectfully notes that the present action does not indicate that the drawings have been accepted by the Examiner. Applicant respectfully requests that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicant may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

Election/Restriction Requirement

Applicant acknowledges the election of Group I, of which claims 1-24 read on, and claims 25 and 26 have been withdrawn by the Examiner as being directed to a non-elected invention. Applicant respectfully reserves the right to file a Divisional application directed to the non-elected invention.

Further, Applicant has amended claims 25 and 26 so that all claims are directed to a “single general inventive concept.” In the outstanding Office Action, the Examiner states that “[u]nless it is specified in Group II that the steps are to be done by control devices, then it would be the same as Group I.” Accordingly, claims 25 and 26 have been amended to include the “control devices,” and to be consistent with Group I. Reconsideration and withdrawal of the Restriction Requirement are respectfully requested.

Claim Rejections - 35 U.S.C. § 112

Claims 2, 3, 5-7, 10-13, 15-17 and 19-24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection for the reasons discussed below.

In the outstanding Office Action, the Examiner stated that “it is unclear if other control devices for the analyzer device and the feeding device (different from that of claim 1) are being claimed or is it the same device as in claim 1 but just performing different functions.” Applicant submits that the control device for controlling the analysis device and the feeding device may be separate devices or a single device. Hence, claim 1 has been amended to recite that the “control device is configured to control the analyzer device and the feeding device” (a single device); and have also

added new claim 27 to recite that the control device may be separate devices (i.e., "an analyzer control device" and "a feed control device").

In regards to claims 3, 5, 19 and 20, Applicant has amended claims 3, 5, 19 and 20 to obviate the rejection.

In regard to claim 10, Applicant has amended claim 10 to recite that the "control device is a computer-based processing and control device."

Reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph, are respectfully requested.

Claim Rejections - 35 U.S.C. § 102

Claims 1-3, 5, 6, 10, 11, 13, 18, 20, 23 and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,878,402 ("Brewster"). Applicant respectfully traverses this rejection for the reasons discussed below.

Applicant respectfully submits that the Brewster reference fails to disclose or suggest each and every element of claim 1, and therefore, an anticipatory rejection has not been established.¹ For example, claim 1, as amended, recites, *inter alia*:

an analyzer device provided on the farm for measuring in real time or near real time an amount of at least one constituent of solid feed to be fed to said animals.

In the outstanding Office Action, the rejection is based on an assertion that "the feedbunk reader, the veterinary analysis and the nutrition analysis, all function as an analyzer to determine the amount of feed to be fed to the animals."² Applicant respectfully disagrees.

¹ A claim is anticipated only if each and every element as set forth and the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP § 2131; *Verdegaal Bros. vs. Union Oil Company of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).

² See Office Action mailed May 12, 2009, paragraph bridging pages 4 and 5.

In particular, the “feedbunk reader” is merely a meter which measures the amount of consumed fodder in a pen. In fact, the Brewster reference states in col. 12, lines 51-63:

When the feed bunk reader visually inspects (i.e., “reads”) the feedbunk of each pen in accordance with the pen sequence numbers in column 1 of the Pen Master file, he will be able to determine (i) how much of the delivered feed ration has been eaten from the feedbunk, (ii) the condition (e.g. health and weight of the animals herein) and, (iii) the condition of the pen itself (i.e., clean or requiring cleaning). During this feedbunk reading process, the feedlot manager assigns each pen a particular feeding priority index of code, which determines where each pen will reside within a prioritized feeding route produced from data contained in the Master Pen File after the feedbunk reader has completed the reading of all feedbunks in the feedlot. (*emphasis added*)

Accordingly, based on the above, the Brewster reference has nothing to do with fodder analysis (i.e., an amount of at least one constituent of solid feed). In other words, the measured constituent in Brewster is not related to the fodder.

With respect to “veterinary analysis” and “nutrition analysis,” it is respectfully submitted that the veterinary analysis and nutrition analysis also has nothing to do with the analysis of the amount of the solid feed. The veterinary analysis and nutrition analysis only describes “in general, computer-network 15 comprises feedbunk reading computer system 17, feed mill computer system 18, feedlot veterinary system 19, feedlot nutrition computer system 20, feedlot management computer system 21A, financial accounting computer system 21B and feed delivery vehicle computer systems 22A, 22B and 22N” (col. 6, lines 6-12).

In addition, the parts of the feedlot veterinary computer system 19 (computer oriented), as described in col. 10, lines 21-58, describes that the system includes a “routine which carry out various data processing and transfer operations relating to veterinary health care of the cattle in the feedlot.” Therefore, not related to the fodder analysis.

In regards to the "feedlot nutrition computer system," it is stated that it comprises "different routines which carry out various data processing and transfer operation relating to the diet and nutrition of the cattle in the feed lot" (col.11, lines 22-25).

Accordingly, Applicant respectfully submits that the Brewster reference fails to disclose, or even suggest, *inter alia*, "an analyzer device provided on the farm for measuring in real time or near real time an amount of at least one constituent of solid feed to be fed to said animals," as recited in amended claim 1.

In addition, Applicant respectfully submits that the Brewster reference fails to disclose or suggest that the analysis device is controlled to measure at least once a day.

In the outstanding Office Action, the Examiner refers to three passages in Brewster (i.e., col. 11, lines 25-41, col. 13, lines 25-31, and col. 14, lines 1-5). However, in col. 11, lines 25-41, it only states that the feedlot management computer system initiates on a daily basis "transmitting or receiving various types of data files during the progression of the feed ration assignment." In regard to col. 13 and col. 14, it is submitted that these passages related to the feeding. In particular, these passages disclose that the feeding can be distributed over several cycles and a feedback mechanism is provided which controls the feeding in following cycles in dependence on the amounts which have been consumed in the first cycle. Since Brewster has not disclosed the measurement according to the above, it cannot be capable of feeding in response to such measurements.

Therefore, contrary to the Examiner's contention, the Brewster reference does not disclose or suggest each and every element of claim 1. Since the Brewster reference fails to disclose each and every element of claim 1, it cannot provide a basis

for a rejection under 35 U.S.C. §102(b) and, thus, is allowable. Claims 2, 3, 5, 6, 10, 11, 13, 18, 20, 23 and 24 depend from amended claim 1 and, therefore, allowable for the similar reasons discussed above with respect to claim 1.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the §102(b) rejection of claims 1-3, 5, 6, 10, 11, 13, 18, 20, 23 and 24.

Claim Rejections - 35 U.S.C. § 103

Claims 4, 12, 14-16 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 7,308,866 ("Birk"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 4, 12, 14-16 and 19 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Birk reference fails to provide the teachings noted above as missing from the Brewster reference. Since claims 4, 12, 14-16 and 19 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 4, 12 14-16 and 19 under 35 U.S.C. §103(a) be withdrawn.

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 6,234,111 ("Ulman"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claim 7 is believed to be allowable for at least the reasons set forth above regarding claim 1. The Ulman reference fails to provide the teachings noted above as missing from the Brewster reference. Since claim 7 is patentable at least by virtue of

its dependency on independent claim 1, Applicant respectfully requests that the rejection of claim 7 under 35 U.S.C. §103(a) be withdrawn.

Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent Application Publication No. 2005/0000457 ("Beck"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 8 and 9 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Beck reference fails to provide the teachings noted above as missing from the Brewster reference. Since claims 8 and 9 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 8 and 9 under 35 U.S.C. §103(a) be withdrawn.

Claims 17 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 4,517,923 ("Palmer"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 17 and 21 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Palmer reference fails to provide the teachings noted above as missing from the Brewster reference. Since claims 17 and 21 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 17 and 21 under 35 U.S.C. §103(a) be withdrawn.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 5,355,833 ("Legrain"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claim 22 is believed to be allowable for at least the reasons set forth above regarding claim 1. The Legrain reference fails to provide the teachings noted above as missing from the Brewster reference. Since claim 22 is patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claim 22 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

In view of the above remarks and amendments, Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicant does not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, Dickey & PIERCE, P.L.C.

By

John A. Castellano, Reg. No. 35,094

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

JAC/DJC:clc